

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

ROSA Y. MUNCHAK, :
Plaintiff : **CIVIL ACTION NO. 3:21-203**
v. : **(JUDGE MANNION)**
ERG STAFFING AGENCY, et al. :
Defendants :

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick, which recommends that the plaintiff's amended complaint (Doc. 9) be dismissed with prejudice.¹ (Doc. 11). The plaintiff has failed to file objections to the report and recommendation.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing

¹ Although the recommendation suggests that dismissal be "without" prejudice, it is clear from the contents of the report, that the actual recommendation is that the action be dismissed with prejudice.

Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

By way of relevant background, the plaintiff filed the instant action, *pro se*, on February 4, 2021. (Doc. 1). Judge Mehalchick reviewed the complaint and found that it failed to properly allege the basis of the court's subject matter jurisdiction. (Doc. 5). The plaintiff was given an opportunity to file an amended complaint which properly alleged a claim over which this court would have jurisdiction. (Id.). The plaintiff filed her amended complaint on May 7, 2021. (Doc. 9). By way of the instant report, Judge Mehalchick screened the plaintiff's amended complaint pursuant to 28 U.S.C. §1915(e)(2)(B)(ii), and found that the plaintiff still fails to properly allege a claim over which this court has jurisdiction. As such, she recommends the action be dismissed. (Doc. 11).

The plaintiff's complaint is summarized as follows:

Munchak seeks to challenge Defendants' decision to terminate her employment. The Amended Complaint, however, continues to lack basis for a Federal claim. Munchak seemingly asserts that because of the amount of time she worked for Defendants and

the quality of work she put forth, it was improper for them to terminate her. Munchak asserts that as a temporary worker she should have been afforded the same rights as those who were permanent and that her loyalty to the company precluded her termination. Munchak also alleges that she was deprived of benefits to which she was entitled. Finally, Munchak begins her Amended Complaint with the statement, “[Please] base my complaint under PA Dept. of Labor Law.”

(Doc. 11, pp. 4-5) (record citations omitted).

Finding that the plaintiff failed to allege either diversity or federal question jurisdiction, Judge Mehalchick recommends that the plaintiff's amended complaint be dismissed for lack of subject matter jurisdiction. Further, because the plaintiff has previously been given the opportunity to amend her complaint and has failed to properly do so, Judge Mehalchick finds that further leave to amend would be futile.

Upon review of Judge Mehalchick's report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Mehalchick to her conclusions. As such, the court will adopt the report and recommendation in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Mehalchick (Doc.

11) is ADOPTED IN ITS ENTIRETY as the decision of the court.

(2) The plaintiff's amended complaint (Doc. 9) is DISMISSED

WITH PREJUDICE.

(3) The Clerk of Court is directed to CLOSE THIS CASE.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: June 30, 2021

21-203-01